

# Life Insurance Planning Opportunities in Early 2020

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# Life Insurance Planning Opportunities in Early 2020

By: Steven S. Zeiger, Lee Slavutin  
and Martin M. Shenkman

  
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**A KEY ESTATE  
PLANNING GUIDE**

**Law Easy**

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New York Best Interest Regulation 187 for Life Insurance.

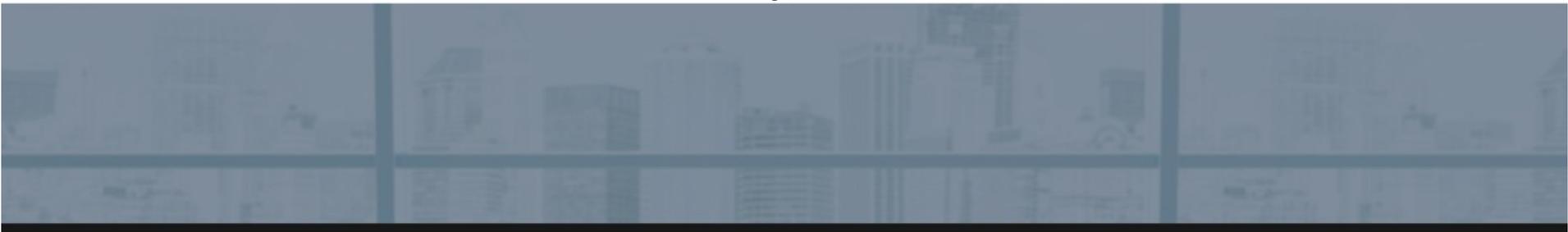
CFP® Practice Standards for Life Insurance

New Requirements for Producers.

New Business Opportunity and Ethical Considerations for Attorneys, CPAs and RIAs

**Steven S. Zeiger, CEBS, TEP**

**January, 2020**



# Situation

Life Insurance is often integral to planning...

- ☑ Income Tax-Free Death Benefit
- ☑ Tax-Deferred Growth of Cash Values
- ☑ Non-Taxable Withdrawals
- ☑ Non-Taxable Loans

Loans from inforce insurance policies that are not modified endowments, are received income tax free. IRC Sec. 72(e)(5)(A)(i).

# Situation

- Life Insurance is often integral to planning, but is often the last, largest, most-neglected asset.
- Charges can be challenging to understand, and costs can vary as much as 80%.
- Actual performance can be difficult to ascertain.
- Relative to client expectations, it can be a poor-performing asset-type.

# Should ILITs be Domiciled in NY?

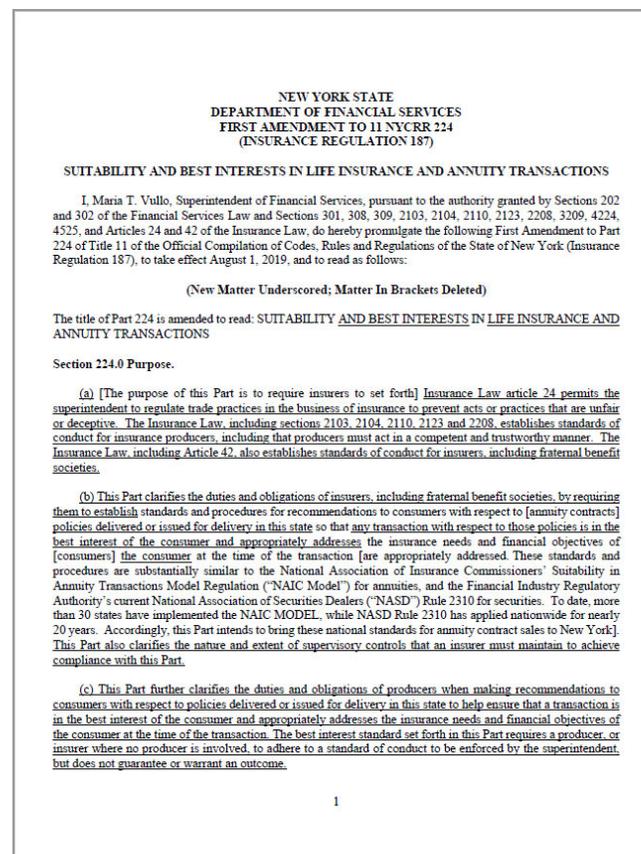
- Asset Protection Trusts domiciled in NV, SD, OH, MO, NH, TN, etc.<sup>1</sup> for statutory protection, income tax, voidable transactions, etc.  
(Source: Steve Oshins 10th Annual Domestic Asset Protection Trust State Rankings)
- Dynasty Trusts domiciled in SD, NV, TN, AK, WY, etc.<sup>2</sup> for perpetuities statute, rule against perpetuities, income tax, spendthrift, etc.  
(Source: Steve Oshins 7th Annual Dynasty Trust State Rankings)
- ILITs domiciled in NY for the best consumer protection laws in the USA
- Ethics discussion for Attorneys who disclaim life insurance in their engagement letters
- Ethical Duty to Disclose Reg 187?

# NY DFS Best Interest Rule (Reg 187)

- Redefines “Clients’ Best Interest” for product recommendations for ...
  - ☑ Residents of New York (even if advisors are in another State)
  - ☑ Former residents of New York but with ILIT(s) domiciled in New York
  - ☑ ILIT Trustees in New York (even if ILIT is domiciled elsewhere)
  - ☑ Financial Advisors in New York or with clients in New York

# Best Interest Rules- Beneficial In Every State

- Redefine “Clients’ Best Interest” for product recommendations similar to other fiduciary rules
  - ☑ Considering only the interests of the consumer in making recommendations
  - ☑ Reflecting the care, skill, prudence, and diligence [of] a prudent person
  - ☑ Prominently disclos[ing] in writing limit[at]ions in] the range of policies recommended.



# Best Interest Rules- Beneficial In Every State

- Redefines “Clients’ Best Interest” for product recommendations based on evaluation of ...
  - ☑ All Products, Services & Transactions Available
  - ☑ Relevant Suitability Information
  - ☑ Justifiable Costs, Reasonable Performance & Appropriate Risk

# NAIC Illustrations Model Regulation

- Define(d) “Clients’ Best Interest” for product recommendations since 1995, BUT ...
  - ❑ Lack uniform practice (NAIC)
  - ❑ NO disclosure of costs, performance or risk

1995 - “The goals ... are to ensure that illustrations do not mislead purchasers of insurance and to make illustrations more understandable.”

2015 - Adopted and updated to address “...lack of uniform practice [resulting in] ... illustrations that use an [apparently] identical crediting approach yet illustrate differing rates.”

LIFE INSURANCE ILLUSTRATIONS MODEL REGULATION

Table of Contents:

Section 1.	Purpose
Section 2.	Authority
Section 3.	Applicability and Scope
Section 4.	Definitions
Section 5.	Policies to Be Illustrated
Section 6.	General Rules and Prohibitions
Section 7.	Standards for Basic Illustrations
Section 8.	Standards for Supplemental Illustrations
Section 9.	Delivery of Illustrations and Record Retention
Section 10.	Annual Report; Notice to Policy Owners
Section 11.	Annual Certifications
Section 12.	Penalties
Section 13.	Separability
Section 14.	Effective Date

Section 1. Purpose

The purpose of this regulation is to provide rules for life insurance policy illustrations that will protect consumers and foster consumer education. The regulation provides illustration formats, prescribes standards to be followed when illustrations are used, and specifies the disclosures that are required in connection with illustrations. The goal of this regulation is to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

Section 2. Authority

This regulation is issued based upon the authority granted the commissioner under Section [cite any enabling legislation and state law corresponding to Section 4 of the NAIC Unfair Trade Practices Act].

Drafting Note: Insert the title of the chief insurance regulatory official whenever the term “commissioner” appears.

Section 3. Applicability and Scope

This regulation applies to all group and individual life insurance policies and certificates except:

- A. Variable life insurance;
- B. Individual and group annuity contracts;

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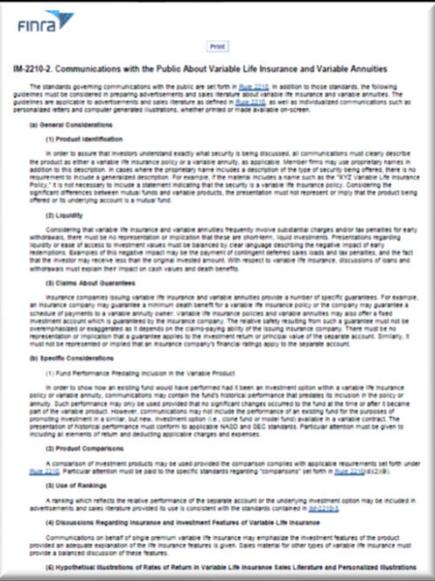
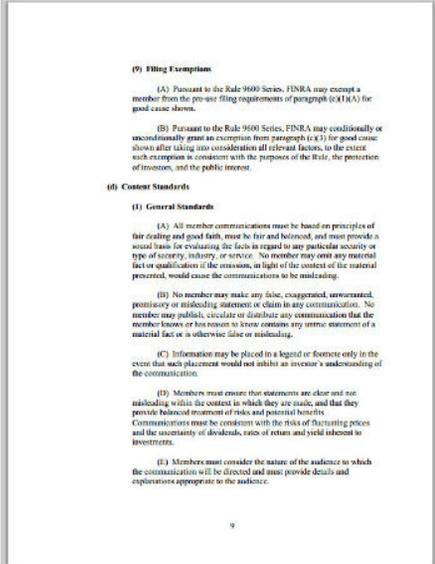
# NAIC Illustrations Model Regulation

- Define(d) “Clients’ Best Interest” for product recommendations since 1995, BUT

- Lack uniform practice (NAIC)
- NO disclosure of costs, performance or risk
- Misleading (FINRA)

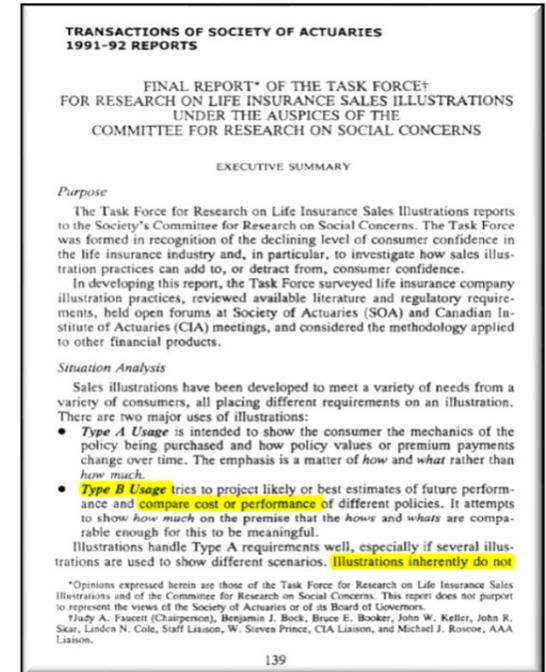
**FINRA Rule 2210(d):** “Any comparison... must disclose all material differences...including investment objectives, costs and expenses, [etc]...[because] omission... would cause the communications to be misleading.”

**FINRA Rule IM-2210-2(c):** “It is inappropriate to compare a ... life insurance policy with another product based on hypothetical performance...”



# NAIC Illustrations Model Regulation

- Define(d) “Clients’ Best Interest” for product recommendations since 1995, BUT ...
  - ❑ Lack uniform practice (NAIC)
  - ❑ NO disclosure of costs, performance or risk
  - ❑ Misleading (FINRA)
  - ❑ Fundamentally Inappropriate (SOA)

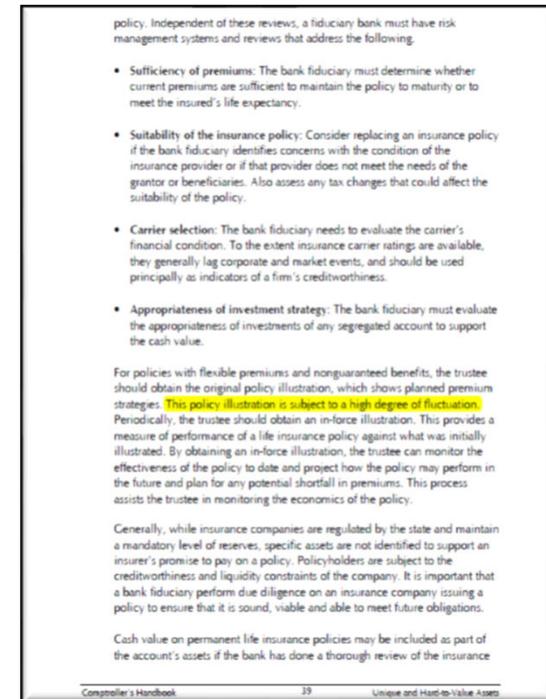
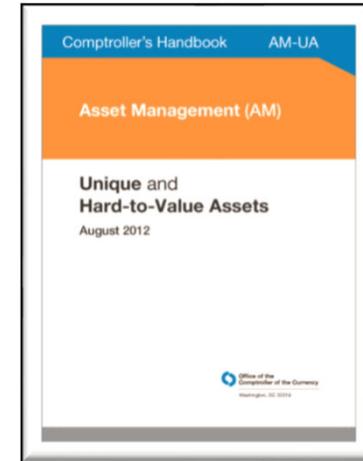


**FINAL REPORT OF THE TASK FORCE FOR RESEARCH ON LIFE INSURANCE SALES ILLUSTRATIONS: “Illustrations should not be used for comparative policy performance purposes” because doing so “is fundamentally inappropriate.”**

# NAIC Illustrations Model Regulation

- Define(d) “Clients’ Best Interest” for product recommendations since 1995, BUT ...
  - ❑ Lack uniform practice (NAIC)
  - ❑ NO disclosure of costs, performance or risk
  - ❑ Misleading (FINRA)
  - ❑ Fundamentally Inappropriate (SOA)
  - ❑ Unreliable (OCC)

**OCC Handbook: “This policy illustration is subject to a high degree of fluctuation.”**



# Uniform Prudent Investor Act

- Prudent Process includes...
  - ☑ Investigate policy costs
  - ☑ Duty to diversify

**SECTION 7. INVESTMENT COSTS:** “a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.”



the interests of participants and beneficiaries in their retirement income to unrelated objectives.”

**SECTION 6. IMPARTIALITY.** If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

**Comment**

The duty of impartiality derives from the duty of loyalty. When the trustee owes duties to more than one beneficiary, loyalty requires the trustee to respect the interests of all the beneficiaries. Prudence in investing and administration requires the trustee to take account of the interests of all the beneficiaries for whom the trustee is acting, especially the conflicts between the interests of beneficiaries interested in income and those interested in principal.

The language of Section 6 derives from Restatement of Trusts 2d § 183 (1959); see also *id.*, § 232. Multiple beneficiaries may be beneficiaries in succession (such as life and remainder interests) or beneficiaries with simultaneous interests (as when the income interest in a trust is being divided among several beneficiaries).

The trustee's duty of impartiality commonly affects the conduct of investment and management functions in the sphere of principal and income allocations. This Act prescribes no regime for allocating receipts and expenses. The details of such allocations are commonly handled under specialized legislation, such as the Revised Uniform Principal and Income Act (1962) (which is presently under study by the Uniform Law Commission with a view toward further revision).

**SECTION 7. INVESTMENT COSTS.** In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

**Comment**

Wasting beneficiaries' money is imprudent. In devising and implementing strategies for the investment and management of trust assets, trustees are obliged to minimize costs.

The language of Section 7 derives from Restatement of Trusts 2d § 188 (1959). The Restatement of Trusts 3d says: “Concerns over compensation and

# Are Internal Costs/Expenses Important?

- UPIA Section 7 requires cost examination, investigation
- FINRA Rule IM 2210(d) requires cost, expense disclosure
- NYS DFS Reg 187 requires justification of costs

What Does Morningstar have to say about expenses?

- “How often did it pay to heed expense ratios? Every time.”
- “The expense ratio is the most proven predictor of future fund returns.”
- “If there's anything in the whole world ..... that you can take to the bank, it's that expense ratios help you make a better decision. In every single time period and data point tested, low-cost funds beat high-cost funds.”
- “Morningstar Overhauls Influential Ratings System-- Investment research firm will put bigger focus on investors' costs”

Do you think costs/expenses are equally important in life insurance?

- Source:
- Morningstar 8/9/2010, 5/5/16
- WSJ 6/28/2019

# Litigation Involving Illustrations

- ☑ Cochran v. Keybank
- ☑ French v. Wachovia
- ☑ Larry King v. Agent
- ☑ Micale v. ILIT Trustee
- ☑ Schneider v. Attorney
- ☑ Vagelos v. Stockbroker
- ☑ Nacchio v. Goldman Sachs

FOR PUBLICATION

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IN THE  
COURT OF APPEALS OF INDIANA

IN RE: MATTER OF THE STUART COCHRAN )  
 IRREVOCABLE TRUST. )  
 CHANELL and MICAELA COCHRAN. )  
 Appellants-Petitioners, )  
 v. ) No. 71A04-0806-CV-384  
 KEYBANK, N.A. )  
 Appellee-Respondent. )

APPEAL FROM THE ST. JOSEPH CIRCUIT COURT  
 The Honorable Michael G. Gotsch, Judge  
 Cause No. 71C01-0404-MJ-0059

March 2, 2009

OPINION - FOR PUBLICATION

A Penton Media Publication

DECEMBER 2010 \$35.00

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## What advisers can learn from a convicted felon's lawsuit against Goldman Sachs

Case highlights vulnerability of advisers when they don't use up-to-date methods to project costs

By Barry D. Flagg | April 15, 2016 - 9:15 am EST

Times are changing in the life insurance business. Age-old industry practices are being questioned by authorities and increasingly are a cause of litigation.

For instance, convicted felon Joseph Nacchio and his wife, Anne M. Esker, were recently awarded \$14.2 million in a lawsuit against a division of Goldman Sachs for a breach of advisory duties that resulted in disappointing performance of their life insurance. The couple initially paid \$4.5 million for \$95 million in coverage, but they were forced to cancel the policies and paid \$26 million in order to replace what they thought they had initially purchased. The jury awarded the couple \$14.2 million, or the equivalent of \$30 million minus the \$16 million they should have paid.

**CLIENT MISUNDERSTANDING**

# Ethical Alternatives to Illustration Comparisons

- NO illustration comparisons in trust/client file.
- Insist on Detailed Expense Pages- see slide 18
- At a MINIMUM, compare costs & performance SEPARATELY-see slide 18
- Benchmarking is well-established & common in the financial services industry.

## Ethical Alternatives to Illustration Comparisons

- **R.A.T.E. of Return Reasonable to Expect**

- R** - Risk Tolerances of Client

- A** - Assets & Asset Class Preferences

- T** - Time Horizons

- E** - Expected Outcomes

Risk Profile	Asset Allocation (Equities/Fixed-Income)	Product Type	Rates of Return Reasonable to Expect
Conservative	20% / 80%	UL/Guaranteed UL/WL	5% - 6%
Moderate-Conservative	40% / 60%	Indexed UL	6% - 7%
Moderate	60% / 40%	VUL	7% - 8%
Moderate-Aggressive	80% / 20%	VUL	8% - 9%
Aggressive	100% / 0%	VUL	9% - 10%

VUL results are not guaranteed, will fluctuate and can be negative

**A LIFE INSURANCE POLICY ILLUSTRATION**  
 A Flexible Premium Universal Life Insurance Policy  
 Guaranteed and Nonguaranteed Values

UL

Life Insurance Illustrations  
 Comingle  
 Costs and Performance

**Illustration Assumptions**

James Farber  
 Male - Super Preferred NonSmoker  
 Age: 60

Initial Death Benefit \$8,000,000  
 Face Amount \$8,000,000  
 Initial Planned Premium: \$181,047.00 / Billing Mode: Annual  
 Death Benefit Option 1; Cash Value Accumulation Test  
 State: South Dakota

Policy Year	EOY Age	Planned Premium	End of Year Guaranteed Assumptions 2.00% Minimum Rate, Maximum Charges				End of Year Non-Guaranteed Assumptions 4.95% Initial Current Rate, Current Charges			
			Policy Value	Net Surrender Value	Net Death Benefit	IRR on Death Benefit	Policy Value	Net Surrender Value	Net Death Benefit	IRR on Death Benefit
1	61	181,047	112,725	0	8,181,047	4,418.74%	120,361	0	8,181,047	4,418.74%
2	62	181,047	224,563	12,350	8,362,094	531.45%	239,709	27,497	8,362,094	531.45%
3	63	181,047	335,522	119,358	8,543,141	222.55%	361,918	145,755	8,543,141	222.55%
4	64	181,047	425,303	206,025	8,724,188	130.63%	466,567	247,288	8,724,188	130.63%
5	65	181,047	508,004	313,800	8,905,235	89.09%	567,575	373,371	8,905,235	89.09%
6	66	181,047	541,539	378,328	9,086,282	66.05%	670,857	507,646	9,086,282	66.05%
7	67	181,047	565,292	436,613	9,267,329	51.63%	773,899	645,220	9,267,329	51.63%
8	68	181,047	578,114	487,506	9,448,376	41.86%	876,199	785,591	9,448,376	41.86%
9	69	181,047	578,398	529,369	9,629,423	34.85%	977,128	928,098	9,629,423	34.85%
10	70	181,047	585,709	585,709	9,810,470	29.61%	1,075,252	1,075,252	9,810,470	29.61%
Totals:		1,810,470								
11	71	181,047	667,743	667,743	9,991,517	25.57%	1,172,156	1,172,156	9,991,517	25.57%
12	72	181,047	747,111	747,111	10,172,564	22.37%	1,264,846	1,264,846	10,172,564	22.37%
13	73	0	731,101	731,101	10,172,564	19.82%	1,201,494	1,201,494	10,172,564	19.82%
14	74	0	707,201	707,201	10,172,564	17.76%	1,151,697	1,151,697	10,172,564	17.76%
15	75	0	687,207	687,207	8,000,000	13.57%	1,215,725	1,215,725	8,000,000	13.57%
16	76	0	657,788	657,788	8,000,000	12.36%	1,279,898	1,279,898	8,000,000	12.36%
17	77	0	555,575	555,575	8,000,000	11.34%	1,345,667	1,345,667	8,000,000	11.34%
18	78	0	391,321	391,321	8,000,000	10.47%	1,412,892	1,412,892	8,000,000	10.47%
19	79	0	199,622	199,622	8,000,000	9.72%	1,481,478	1,481,478	8,000,000	9.72%
20	80	0	0	0	8,000,000	9.07%	1,545,179	1,545,179	8,000,000	9.07%
Totals:		2,172,564								
21	81	0	0	0	8,000,000	8.50%	1,604,587	1,604,587	8,000,000	8.50%
22	82	0	0	0	8,000,000	7.99%	1,663,210	1,663,210	8,000,000	7.99%
23	83	0	0	0	8,000,000	7.54%	1,720,755	1,720,755	8,000,000	7.54%
24	84	0	0	0	8,000,000	7.14%	1,776,414	1,776,414	8,000,000	7.14%
25	85	0	0	0	8,000,000	6.77%	1,828,608	1,828,608	8,000,000	6.77%
26	86	0	0	0	8,000,000	6.45%	1,876,508	1,876,508	8,000,000	6.45%
27	87	0	0	0	8,000,000	6.15%	1,921,342	1,921,342	8,000,000	6.15%
28	88	0	##	##	##	##	1,962,855	1,962,855	8,000,000	5.87%
29	89	0					1,999,674	1,999,674	8,000,000	5.62%
30	90	0					2,030,916	2,030,916	8,000,000	5.39%
Totals:		2,172,564								

1. \$1,828,608-\$1,776,614= \$51,994 actual gain
2. \$1,828,608X.0495=\$90,516 expected gain
3. \$90,516-\$51,994=\$38,522 expected costs

Based on sample hypothetical illustration

The IRR on death benefit is equivalent to an interest rate at which an amount equal to the illustrated premiums could have been invested outside the policy to arrive at the net death benefit of the policy.

## Indicates that the policy has lapsed under the illustrated assumption. Additional premium would be required to maintain policy benefits.

This is your Basic Illustration and is valid only if all illustration pages are included.



Life Insurance Company (U.S.A.)

A LIFE INSURANCE POLICY ILLUSTRATION

A Flexible Premium Universal Life Insurance Policy

Annual Account Summary

UL

Illustration Assumptions

James Farber  
Male - Super Preferred NonSmoker  
Age: 60

Initial Death Benefit \$8,000,000  
Face Amount \$8,000,000

Initial Planned Premium: \$181,047.00 / Billing Mode: Annual  
Death Benefit Option 1; Cash Value Accumulation Test  
State: South Dakota

Based on Current Charges and an Initial Current Rate of 4.95%

Annual Account Summaries  
and Detailed Expense  
Pages Do NOT Comingle  
Cost and Performance.

Policy Year	Planned Premium	Premium Charge	Admin/ Contract Charges	Insurance Charges	Amount Credited	Policy Value	Surrender Charge	Net Surrender Value
1	181,047	32,588	33,274	1,253	6,430	120,361	207,414	0
2	181,047	32,588	33,274	8,044	12,207	239,709	212,212	27,497
3	181,047	32,588	33,274	11,011	18,036	361,918	216,164	145,755
4	181,047	32,588	53,475	13,808	23,473	466,567	219,279	247,288
5	181,047	32,588	58,907	16,969	28,425	567,575	194,204	373,371
6	181,047	32,588	60,731	19,867	35,421	670,857	163,211	507,646
7	181,047	32,588	62,555	23,564	40,703	773,899	128,679	645,220
8	181,047	32,588	64,379	27,738	45,959	876,199	90,608	785,591
9	181,047	32,588	66,204	32,486	51,159	977,128	49,029	928,098
10	181,047	32,588	68,028	38,557	56,250	1,075,252	0	1,075,252
Totals:	1,810,470	325,885	534,099	193,297	318,063			
11	181,047	32,588	69,852	42,944	61,241	1,172,156	0	1,172,156
12	181,047	32,588	71,676	50,179	66,087	1,264,846	0	1,264,846
13	0	0	68,069	58,307	63,024	1,201,494	0	1,201,494
14	0	0	64,462	67,402	82,067	1,151,697	0	1,151,697
15	0	0	60,855	59,211	184,094	1,215,725	0	1,215,725
16	0	0	57,247	70,337	191,757	1,279,898	0	1,279,898
17	0	0	53,640	79,345	198,754	1,345,667	0	1,345,667
18	0	0	50,033	89,586	206,844	1,412,892	0	1,412,892
19	0	0	49,786	101,095	219,466	1,481,478	0	1,481,478
20	0	0	49,786	126,066	239,553	1,545,179	0	1,545,179
Totals:	2,172,564	391,062	1,129,504	937,769	1,830,950			
21	0	0	49,786	150,978	260,171	1,604,587	0	1,604,587
22	0	0	49,786	170,244	278,653	1,663,210	0	1,663,210
23	0	0	49,786	191,970	299,300	1,720,755	0	1,720,755
24	0	0	49,786	216,563	322,008	1,776,414	0	1,776,414
25	0	0	49,786	246,751	348,731	1,828,608	0	1,828,608
26	0	0	49,786	281,308	378,993	1,876,508	0	1,876,508
27	0	0	49,786	317,371	411,990	1,921,342	0	1,921,342
28	0	0	49,786	361,362	452,660	1,962,855	0	1,962,855
29	0	0	49,786	424,709	511,313	1,999,674	0	1,999,674
30	0	0	49,786	498,992	580,020	2,030,916	0	2,030,916
Totals:	2,172,564	391,062	1,627,360	3,798,016	5,674,790			

The prospect/client believes that this conservative general account product requires earnings of \$90,516 to function as illustrated on page 8, the product actually requires earnings over 3x greater.  
Lesson Learned: Separate Cost From Performance!

## Indicates that the policy has lapsed under the illustrated assumption. Additional premium would be required to maintain policy benefits.

This is your Basic Illustration and is valid only if all illustration pages are included.

**1. Financial Strength & Claims-Paying Ability: (1 star)**



The insurer's financial strength and claims-paying ability ranks in the top decile (i.e., among the top 10%) of all rated insurers. While high ratings for financial strength and claims-paying ability do not necessarily, in and of themselves, render a policy appropriate, high ratings **and** low cost is considered more appropriate than otherwise. (Carrier Strength is reported in "Carrier Due Care" located in the lower left corner of page 2 of the CPE Report. This section reports the insurer's ratings and rankings by the four leading ratings services and the insurer's percentile ranking using a composite index. Ratings methods and the significance of these rankings are discussed in detail on pages 2 and 3 of Section 4, *CPE User Guide*, of this report.)

**2. Cost Competitiveness: (1 star)**



The policy under evaluation illustrates an overall cost structure and premium that is more competitive than the relevant benchmark representative of an average, but competitively priced product. While a low overall cost structure and low illustrated premiums do not necessarily, in and of themselves, render the policy appropriate, low premiums that are the result of a low cost structure attributable to some demonstrable operating, underwriting and/or marketing advantage are considered more appropriate than otherwise. To evaluate Cost Competitiveness, the CPE system considers Funding Strategy and Pricing Style (reported in "Product Profile" located at the top left corner of page 1 of the CPE Report), as well as Premium Cost Competitiveness (reported in "Premium Comparison" located at the upper right corner of page 1 of the CPE Report). (The significance of Cost Competitiveness is discussed in detail on pages 3-5 of Section 4, *CPE User Guide*, of this report.)

**3. Pricing Stability: (1 star)**



Pricing of all life insurance policies are a function of three (3) variables: 1) cost of insurance (COI) charges, 2) policy expenses, and 3) the illustrated/actual earnings rate on policy cash values. Pricing for the policy under evaluation is adequate and reasonable to the extent that cost of insurance (COI) charges and policy expenses appear to be based on actual claims and operating experience according to disclosures included in the illustration of the policy under evaluation. The insurer's retention capacity allows the insurer to exercise substantial control over pricing for the policy under evaluation, and, therefore, pricing for this policy is least vulnerable to changes in the reinsurance market. In addition, the pricing of the policy under evaluation is based on interest assumptions which are in line with historical returns for the asset classes corresponding to the asset types in which policy cash values are invested. While the CPE has no way of predicting whether a policy will perform as illustrated, the CPE does consider whether the values illustrated are consistent with the insurer's historical experience, whether this experience has been fully disclosed, and how potential changes in experience might impact future policy performance. (The significance of Pricing Stability is discussed in detail on pages 5 and 6 of Section 4, *CPE User Guide*, of this report.)

**4. Relative Policy Value: (1 star)**



Cash value liquidity for this policy is greater than the representative benchmarks. While liquidity can be less relevant in certain plan designs, policies with higher cash values and greater liquidity than relevant benchmarks are generally considered more appropriate than policies with lower cash values and more limited access to policy cash values. (Relative Cash Value comparisons are summarized in “Hypothetical Policy Cash Value Account Growth” located near the bottom of page 1 of the CPE Report. The significance of Relative Cash Value is discussed on pages 6 and 7 of Section 4, *CPE User Guide*, of this report.)

**5. Historical Performance: (1/2 star)**



The cash value allocation options for the product under evaluation are considered acceptable in that the historical net yield on the insurer’s General Account Portfolio supporting illustrated policy cash values is roughly the same as the average historical net yield for all insurers (to the extent that allocating *all* policy cash values to non-equity, fixed-income-type assets is consistent with the risk/return profile of the policy owner). Insurers are required by law to invest cash values for permanent products (other than variable) predominantly in declared-rate investments such as bonds and mortgages. While the illustrated policy crediting rate may be higher or lower than the insurer’s net portfolio yield at a given point in time, over time the actual policy crediting rate must correlate with the yield on the insurer’s General Account Portfolio. Thus, permanent products (other than variable) whose cash values are invested in a General Account with *higher* historical net yields are generally considered more appropriate than policies whose cash values are invested in a General Account with *lower* historical net yields. (The CPE compares the illustrated net portfolio yield with average net portfolio yields for all insurers and summarizes comparisons in “Product Profile” located in the upper left corner of page 1 of the CPE Report. The significance of Cash Value Allocation Options is discussed on pages 7 and 8 of Section 4, *CPE User Guide*, of this report).

# MetLife Life Paid-Up at Age 98

TheInsuranceAdvisor.com Category  
Institutional

## Product Profile

Product Rating: (4 1/2 stars out of 5 stars) ★★★★★  
 Product Type: WL  
 Premium Type: Fixed  
 Min. Face Amount: \$10,000  
 Optimal Funding Strategy: Mixed

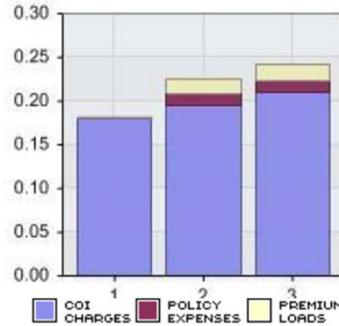
**Pricing Style:**  
 Policy pricing is a function of 3 factors: Cost of Insurance Charges (COIs), Expenses & Earnings. Product suitability is therefore categorized by the structure of and the underlying experience for these pricing components. (See The Pricing Advisor section below or at www.TheInsuranceAdvisor.com for more information.)

	Max. Accum	Mixed	Min. Prem
Retail			
Institutional		■	
Experience-Rated			

Policy Under Evaluation: 5.89%  
 5-yr Avg. Net Portfolio Yield\*  
 Avg for All Policies: 5.72%

\* Source: VitalSigns®

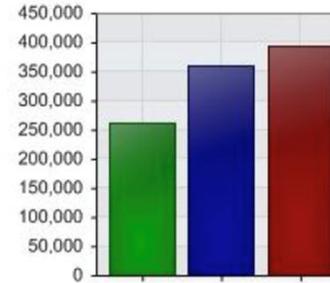
## Policy Expense Breakdown



1. Policy Under Evaluation
2. Institutionally Priced Policies
3. Retail Policies

Policy Expense Breakdown measures the present value cost per \$ of Death Benefit and the individual cost components, assuming identical funding amounts and funding patterns for a policy issued to a 54 year old male Non-Smoker Preferred + risk.

## Premium Comparison - Face Amt: \$12,213,423



1. Policy Under Evaluation
2. Institutional Pricing Benchmark
3. Benchmark for All Policies

Premium Comparison calculates the minimum level annual premium required over 7 years to endow the policy, assuming a 6.25% average net policy earnings rate and current expense assumptions for a policy issued to a 54 year old male Non-Smoker Preferred + risk.

## Cost of Insurance (COI) Charges

	Policy Under Evaluation	Institutional Pricing Benchmark	Benchmark for All Policies
Weighted-Average Annual COI	\$1,041,373	\$1,052,914	\$1,065,197

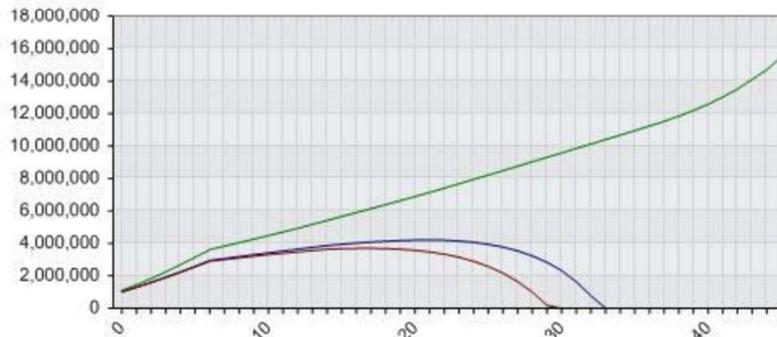
## Policy Expenses

	Policy Under Evaluation	Institutional Pricing Benchmark	Benchmark for All Policies
% of Cash Value			
M&E Risk %	0.00	0.00	0.00
Other %	0.00	0.00	0.00
Total %	0.00	0.00	0.00
Loan Spread %	N/A	1.00	2.00
Fixed Charges Per Policy Yr	\$0	\$11,941	\$11,941

## Premium Loads

	Policy Under Evaluation	Institutional Pricing Benchmark	Benchmark for All Policies
% of Premium			
State Tax %	0.00	2.35	2.35
Fed DAC Tax %	0.00	1.50	1.50
Carrier % Load(s)	0.00	0.00	0.00
Sales/Service % Load(s)	0.00	3.65	3.65
Total %	0.00	7.50	7.50

## Hypothetical Policy Cash Value Account Growth



Planned Annual Premium: \$260,330

- Policy Under Evaluation
- Institutional Pricing Benchmark
- Benchmark for All Policies

The purpose of this graph is to show how different policy charges could effect policy value and death benefit. This graph is hypothetical and may not be used to predict or project actual policy performance or tax treatment.

Policy/Benchmark	Est Yr 1 Cash Value / Premium Ratio	Surrender Charge	Yrs Applied	Average Decrease %/Yr	Death Benefit @ Endowment/Maturity	Crediting Rate %	Bonus Rate %	Ultimate Rate %
Policy Under Evaluation	117.87%	0.00%	N/A	N/A	\$15,482,459	6.25	0.00	6.25
Benchmark for Institutionally-Priced Policies	80.00%	0.00%	N/A	N/A	Lapse @ Y34	6.25	0.00	6.25
Benchmark for All Policies	0.00%	88.00%	11	8.0000%	Lapse @ Y31	6.25	0.00	6.25

# New York Life Whole Life

TheInsuranceAdvisor.com Category  
Institutional

## Product Profile

Product Rating: (3 1/2 stars out of 5 stars) ★★☆☆  
 Product Type: WL  
 Premium Type: Fixed  
 Min. Face Amount: \$10,000  
 Optimal Funding Strategy: Mixed

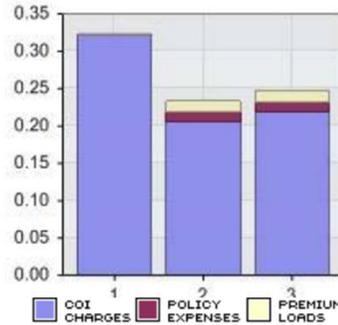
**Pricing Style:**  
 Policy pricing is a function of 3 factors: Cost of Insurance Charges (COI), Expenses & Earnings. Product suitability is therefore categorized by the structure of and the underlying experience for these pricing components. (See The Pricing Advisor section below or at www.TheInsuranceAdvisor.com for more information.)

	Max. Accum	Mixed	Min. Prem
Retail			
Institutional		■	
Experience-Rated			

Policy Under Evaluation: 5.76%  
 5-yr Avg. Net Portfolio Yield\*  
 Avg for All Policies: 5.72%

\* Source: VitalSigns\*

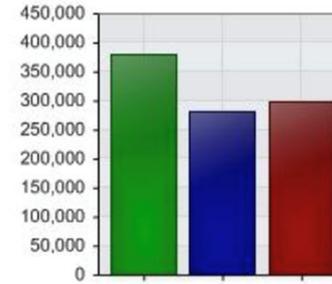
## Policy Expense Breakdown



1. Policy Under Evaluation
2. Institutionally Priced Policies
3. Retail Policies

Policy Expense Breakdown measures the present value cost per \$ of Death Benefit and the individual cost components, assuming identical funding amounts and funding patterns for a policy issued to a 55 year old male Non-Smoker Preferred risk.

## Premium Comparison - Face Amt: \$1,085,979



1. Policy Under Evaluation
2. Institutional Pricing Benchmark
3. Benchmark for All Policies

Premium Comparison calculates the minimum level annual premium required over 1 years to endow the policy, assuming a 6.79% average net policy earnings rate and current expense assumptions for a policy issued to a 55 year old male Non-Smoker Preferred risk.

## Cost of Insurance (COI) Charges

	Policy Under Evaluation	Institutional Pricing Benchmark	Benchmark for All Policies
Weighted-Average Annual COI	\$125,161	\$115,674	\$116,736

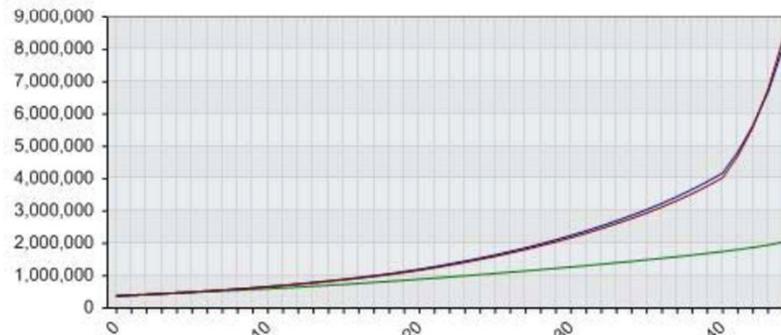
## Policy Expenses

	Policy Under Evaluation	Institutional Pricing Benchmark	Benchmark for All Policies
% of Cash Value			
M&E Risk %	0.00	0.00	0.00
Other %	0.00	0.00	0.00
Total %	0.00	0.00	0.00
Loan Spread %	0.92	1.00	2.00
Fixed Charges Per Policy Yr	\$0	\$1,283	\$1,283

## Premium Loads

	Policy Under Evaluation	Institutional Pricing Benchmark	Benchmark for All Policies
% of Premium			
State Tax %	0.00	2.35	2.35
Fed DAC Tax %	0.00	1.50	1.50
Carrier % Load(s)	0.00	0.00	0.00
Sales/Service % Load(s)	0.00	3.65	3.65
Total %	0.00	7.50	7.50

## Hypothetical Policy Cash Value Account Growth



Planned Annual Premium: \$379,827

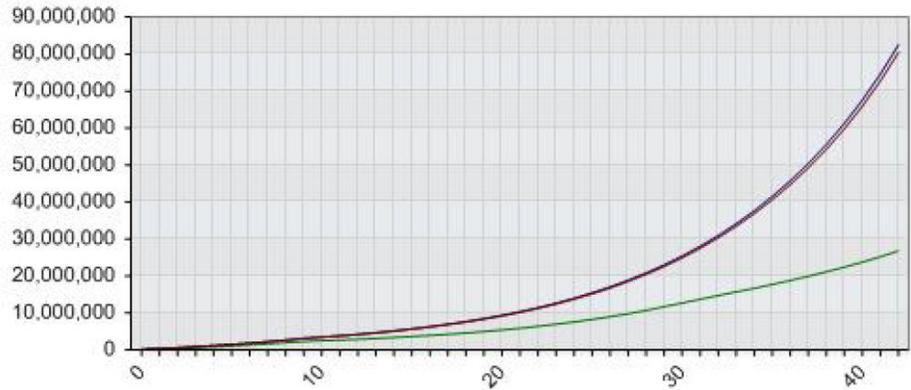
- Policy Under Evaluation
- Institutional Pricing Benchmark
- Benchmark for All Policies

The purpose of this graph is to show how different policy charges could effect policy value and death benefit. This graph is hypothetical and may not be used to predict or project actual policy performance or tax treatment.

Policy/Benchmark	Est Yr 1 Cash Value / Premium Ratio	Surrender Charge	Yrs Applied	Average Decrease %/Yr	Death Benefit @ Endowment/Maturity	Crediting Rate %	Bonus Rate %	Ultimate Rate %
Policy Under Evaluation	104.37%	0.00%	N/A	N/A	\$2,042,788	6.79	0.00	6.79
Benchmark for Institutionally-Priced Policies	80.00%	0.00%	N/A	N/A	\$2,042,788	6.79	0.00	6.79
Benchmark for All Policies	0.00%	88.00%	11	8.0000%	\$2,042,788	6.79	0.00	6.79

# Ethical Alternatives to Illustration Comparisons

Hypothetical Policy Cash Value Account Growth Planned Annual Premium: \$200,000



- Policy Under Evaluation
- Institutional Pricing Benchmark
- Benchmark for All Policies

The purpose of this graph is to show how different policy charges could effect policy value and death benefit. This graph is hypothetical and may not be used to predict or project actual policy performance or tax treatment.

Policy/Benchmark	Est Yr 1 Cash Value / Premium Ratio	Surrender Charge	Yrs Applied	Average Decrease %/Yr	Death Benefit @ Endowment/Maturity	Crediting Rate %	Bonus Rate %	Ultimate Rate %
Policy Under Evaluation	30.27%	56.86%	9	6.32%	\$27,070,170	6.09	4.61	10.70
Benchmark for Institutionally-Priced Policies	80.00%	0.00%	N/A	N/A	\$75,356,570	6.09	4.61	10.70
Benchmark of All Policies	0.00%	88.00%	11	8.00%	\$73,492,940	6.09	4.61	10.70

Crediting	Bonus	Ultimate
Rate %	Rate %	Rate %
6.09	4.61	10.70

Courtesy of  
**Veralytic**

# Ethical Alternatives to Illustration Comparisons

- Illustration comparisons inconsistent with duty to exercise care, skill, prudence, and diligence.
- Benchmarking costs SEPARATE from performance is ...
  - Well-established, common & proven
  - Consistent with NY DFS Reg 187 and CFP Fiduciary Standard
  - FINRA Reviewed

# Q&A

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The information presented in this presentation is for educational purposes only and is not intended as a solicitation. 269937.1





# Life Insurance Planning Opportunities in 2020

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# CAVEAT:

This material is approved for use only with Attorneys, CPAs and other Life Insurance Professionals.

Lee Slavutin is not authorized to give tax or legal advice. Consult your own personal attorney, legal or tax counsel for advice on specific legal and tax matters.

CRN202201-248594

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www.sternslavutin.com

# FOUR IMPORTANT DEVELOPMENTS

- Changes brought about by the Tax Cuts and Jobs Act
- New regulations on reportable policy sales
- Generational split dollar
- The SECURE Act



# IMPACT OF TCJA ON LIFE INSURANCE

- **3 provisions** in TCJA with the greatest effect on life insurance planning:
  - Increased lifetime gift tax exclusion
  - Lower 21% maximum corporate tax rate
  - New rules for life settlements



# 1 – USING THE INCREASED LIFETIME GIFT TAX EXCLUSION

- The TCJA increased the basic exclusion amount from \$5 million to \$10 million, adjusted for inflation.
  - A new Chained CPI mechanism will compute the inflation-adjusted amounts.
  - An individual will be able to exclude \$11.58 million in 2020; a married couple using portability will be able to exclude \$23.16 million.



# 1 – INCREASES ARE TEMPORARY

- As significant as these increases are, they are temporary provisions.
  - Lifetime exemption amounts are scheduled to sunset to their pre-TCJA amount (adjusted for inflation) beginning in 2026.
  
- This gives financial planners 6 years to help clients make the most of these large exclusions.
  - The greatest planning opportunities are lifetime gifts.
  - Change of control in Congress could cause these amounts to decrease sooner than currently planned.



# 1 – USING LIFETIME EXCLUSION

- One disadvantage to making large gifts now: a gift with a low-basis - basis is carried over.
  - This may present an income tax problem when the asset is sold.
  - Planners should weigh the potential growth in the value of the asset outside the estate versus potential capital gains tax at the point of sale.



# 1A – EXISTING LIFE INSURANCE POLICIES

- Should individuals with estates of less than \$11.58 million drop existing life insurance policies because they no longer have estate tax exposure?
  - If the provisions do sunset as planned, the individual may need the policy if he or she survives the next eight years.
  - Individuals may develop medical problems that make them ineligible for life insurance policies later on.
  - Existing permanent insurance policies may have significant cash value and act as conservative savings vehicles.

***\*Most individuals have retained their life insurance policies over the last 30 years even as the exemption has risen from \$600,000 to \$11.58 million.***

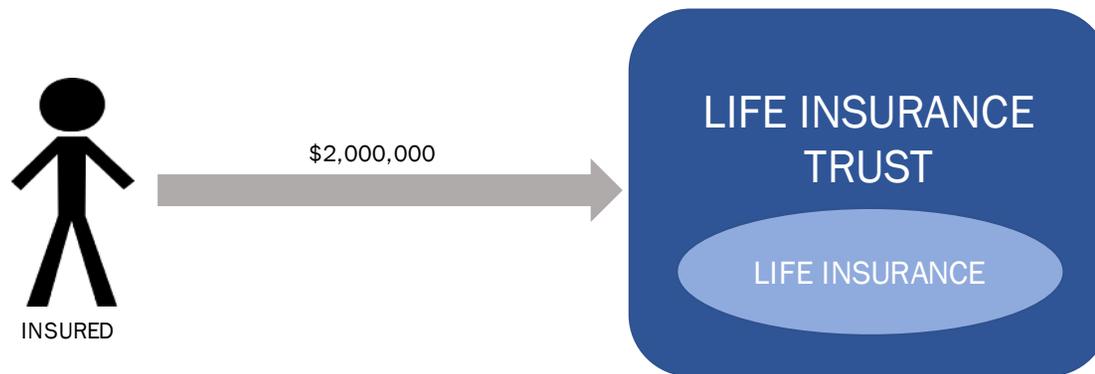


# 1B(i) – GIFTS: PRE-FUND LIFE INSURANCE

- Clients can use the increased exclusion to fund the purchase of a large amount of life insurance.
  - Example: Client could purchase a life insurance policy with annual premiums of \$100,000 (\$3 million over 30 years).
  - With discount for investment earnings, a gift of \$2.0 million to an irrevocable life insurance trust could be used to prepay all premium payments.



# 1B(i) – GIFTS: PRE-FUND LIFE INSURANCE



## 1B(ii) – AVOIDING MEC RULES

- When funding insurance policy premiums upfront, planners should be aware of the modified endowment contract (MEC) rules.
  - A MEC can have adverse tax consequences when taking money out of the policy's cash value.
  - Example: for a policy with \$3 million cash value funded by a gift of \$2 million, a withdrawal of \$100,000 would be considered taxable income.
  
- Individuals buying life insurance for estate liquidity purposes may not be concerned about the MEC issue because death benefit is key
  - If a policy will build up significant cash value, gifts can be spread over 3-4 years to avoid the MEC characterization.

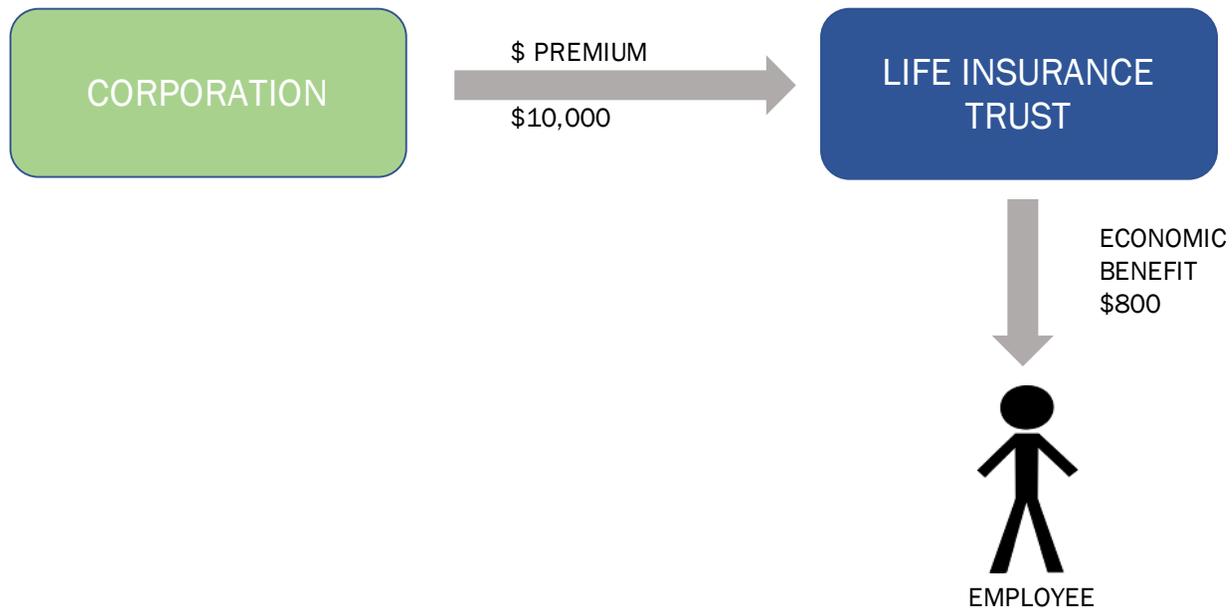


# 1C – EXIT FROM SPLIT DOLLAR PLAN

- Clients could exit from split-dollar arrangements.
  - In split-dollar, a donor funds premiums into a trust; upon termination of the arrangement, the donor is to be repaid premium amounts.
  - The value of the economic benefit must be picked up as a gift each year under split-dollar; these amounts may become burdensome over time.
  - Employment split-dollar agreements may have income tax ramifications as well.
  - Terminating a split-dollar arrangement established before the 2003 regulations may expose built-up equity to income tax.



# 1C – EXIT FROM SPLIT DOLLAR PLAN

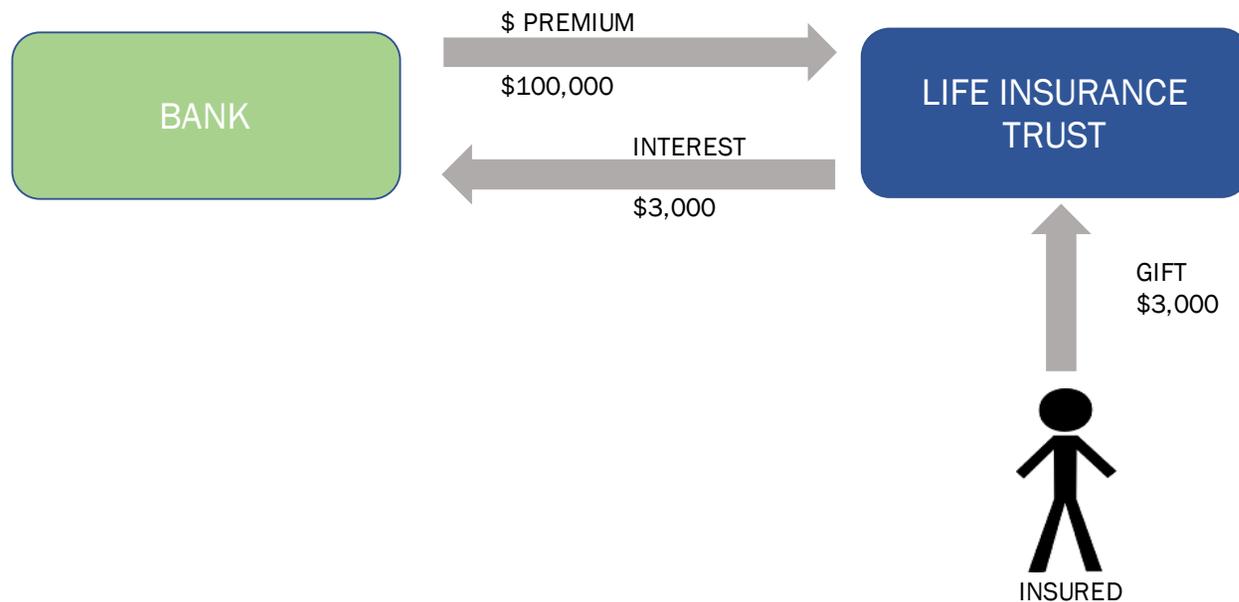


# 1D – EXIT FROM PREMIUM FINANCE PLAN

- Clients could exit from premium financing arrangements.
  - In premium financing arrangements, a trust that owns the policy has been borrowing money.
  - Each year the premiums are funded by a loan, and loan interest has to be paid and increases annually.
  - This can become burdensome, and parties may prefer to extricate themselves from the arrangement similar to the split-dollar situation.



# 1D – EXIT FROM PREMIUM FINANCE PLAN

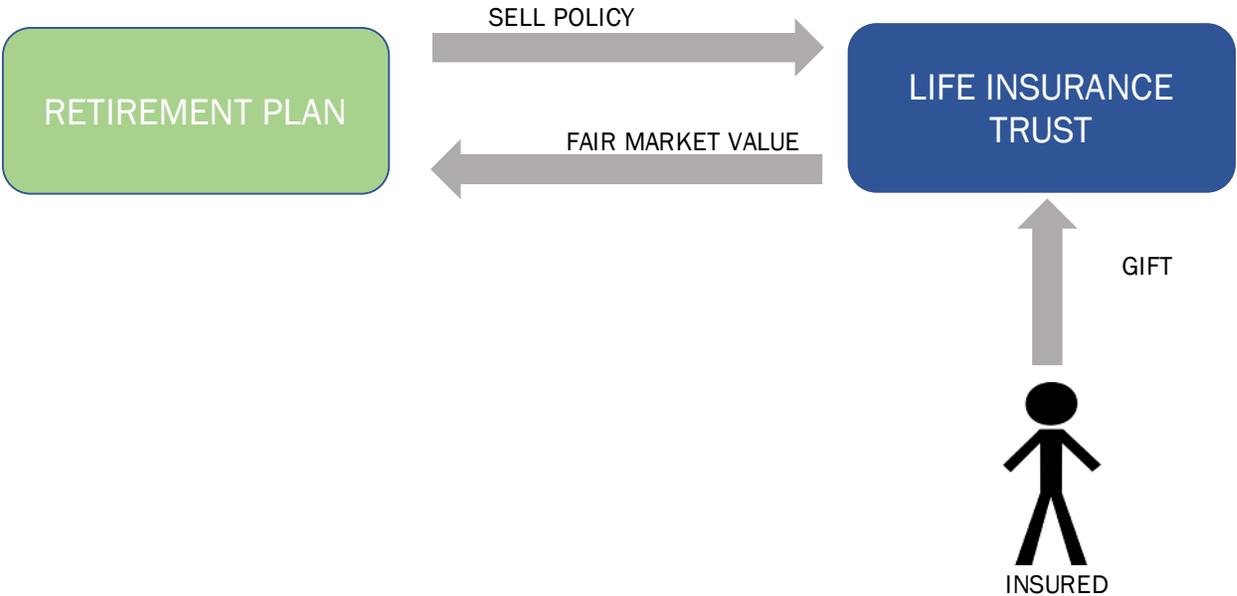


# 1E – MOVE LIFE INSURANCE POLICY FROM RETIREMENT PLAN TO ILIT

- Clients can move a life insurance policy owned by a retirement plan into a life insurance trust
  - This would prevent the policy from being included in the individual's estate at death.
  - Prohibited Transaction Exemption (PTE) 92-6 permits the sale of an insurance policy from a retirement plan to a participant or a trust for fair market value.
  - Advisory Opinion 2006-03A permits the sale of a second-to-die policy from a profit sharing plan to the insured and spouse.



# 1E – MOVE LIFE INSURANCE POLICY FROM RETIREMENT PLAN TO ILIT



## 2 – USING THE LOWER MAXIMUM CORPORATE TAX RATE

- TCJA lowers the maximum corporate income tax rate to 21% and eliminates the corporate alternative minimum tax.
  - These provisions are aimed at large, publicly held C corporations, which historically faced double taxation at both the corporate and individual shareholder levels.
  - Some private companies may operate as C corporations, and others may convert from S to C.

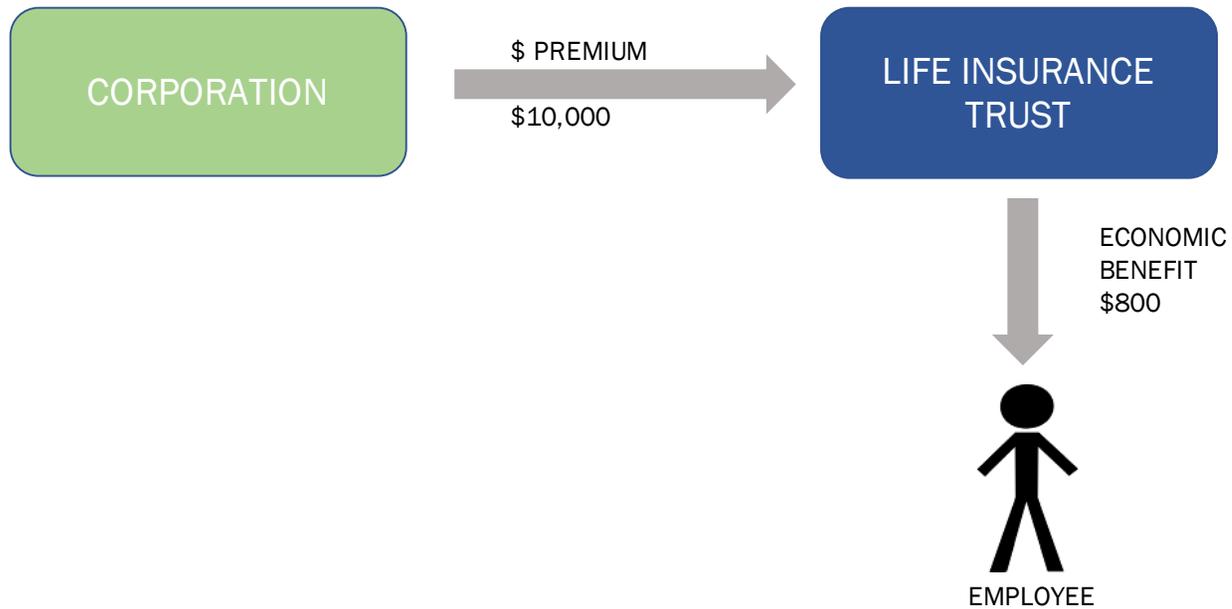


## 2A – C CORP. SPLIT DOLLAR

- Use the retained earnings in a C corporation to fund a split-dollar arrangement.
  - This avoids the double taxation issue because only a relatively small amount is deemed a distribution to the shareholder.
  - This is an opportunity to move dollars subject to the relatively low 21% level of taxation into an insurance trust as part of a split-dollar arrangement.



# 2A – C CORP. SPLIT DOLLAR



## 2B – KEY PERSON AND BUY-SELL

- Purchase key-person or buy-sell insurance.
  - Term insurance is typically used but permanent insurance may be more appropriate in some cases.
  - Permanent insurance may be used when the cash value is needed to fund a deferred compensation agreement or because long-term expectations for the business are favorable.
  - Permanent insurance premiums are higher, but the ability to use funds subject to lower tax rates to buy insurance makes this option more attractive than before the TCJA.



# 3 – NEW RULES FOR LIFE SETTLEMENTS

- New rule regarding basis calculation in life settlements:
  - Although life settlements occupy a narrow space in the life insurance sector, the changes could be significant for individuals who do use them.
  - The new rule is found in section 13521(a) of the TCJA and reverses the IRS' previous position on these transactions.



## 3 – NEW RULES FOR LIFE SETTLEMENTS

- Life settlements allow holders of policies that would otherwise be cancelled to sell their policy to an institutional buyer willing to pay a percentage of the face amount of the policy.
  - This particularly applies when the insured is expected to live 10 years or less.
  - Some tax may be owed on the policy sale, but the net may be higher than it would have been without the life settlement.
  - The change in the definition of basis applies retroactively to transactions entered into after August 25, 2009, meaning some taxpayers may be eligible to apply for a refund.
  
- An in-depth analysis of any life settlement should be made prior to engaging in the transaction. Trustees will want a well-documented rationale to show beneficiaries why they recommend the life settlement.



# 3 – NEW RULES FOR LIFE SETTLEMENTS

- The TCJA also added new reporting requirements applicable to sales and the payment of reportable death benefits after December 31, 2018.
  - Any transaction that qualifies as a “reportable policy sale” must make a return setting forth certain information.
  
- The TCJA provides that for a reportable policy sale, the exceptions to the transfer for value rules do NOT apply.



# Life Insurance: the Last 30 Years

- Financial Strength
  - Comdex score
  - The impact of financial strength on insurance costs
- 2008-2020: Low interest rates
  - Monitoring policy performance is so important – treat insurance portfolio like other assets that are continuously monitored.
  - Increases in cost of insurance in universal life policies
- Long-term care insurance – Hybrid life insurance/long term care policies

# RECENT DEVELOPMENTS

## ➤ Generational split-dollar

- Tax court decisions expected - *Levine* and *Morrisette*

## ➤ The SECURE Act

- Acceleration of distributions at death from an IRA to a non-spouse beneficiary
- Possible strategies include conversion to a ROTH IRA and the purchase of life insurance for estate liquidity



# CLE Credits

- For more information about earning CLE credit for this program or other Martin Shenkman programs please contact Simcha Dornbush at NACLE. 212-776-4943 Ext. 110 or email [sdornbush@nacle.com](mailto:sdornbush@nacle.com)